

REMARKS

The application has been carefully reviewed in light of the Office Action dated May 1, 2007. Claims 1-82 are pending. Claims 1, 14, 21 and 34 are amended in this action. Claims 41-75 and 80-81 are canceled without prejudice, waiver, or disclaimer. No new matter is believed to be added by this amendment. In addition, unless a passage of an amendment is specifically discussed below in connection with one or more cited references, Applicants respectfully submit that the remarks accompanying this amendment should be constructed as being submitted merely to clarify the invention rather than as a limitation submitted to overcome a cited reference.

Claim Rejections under 35 USC §102

Independent Claims 1 and 21 stand rejected under 35 USC §102 as allegedly being anticipated by Eppstein (US 6,183,434); Roser et al. (6,290,991), Sherman (6,451,240), and Eppstein (6,527,716). Applicants respectfully traverse. As amended, independent Claims 1 and 21 read as follows:

1. A method for delivering permeant substances through a biological membrane of an animal comprising applying at least one heated probe element capable of conductively delivering thermal energy via direct contact to the biological membrane to cause the ablation of some portion of the membrane to form at least one delivery opening in the membrane, said at least one delivery opening having a mean opening depth of between about 40 and about 90 microns.

21. A method for delivering drugs transdermally into a biological membrane of an animal comprising ablating a plurality of delivery openings through a membrane, wherein said delivery openings have a distribution resulting in a bell-shaped curve with said delivery openings having a mean opening depth of between about 40 and about 90 microns.

Applicants respectfully assert that the cited references fails to anticipate independent Claim 1, as currently claimed, because differences exist between the claimed invention and the respective disclosure. Particularly, there is no methodology for ablating at least one delivery

opening having a mean opening depth of between about 40 and about 90 disclosed in the references. The Federal Circuit has held that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Cir. 1988) (quoting *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 771, 218 U.S.P.Q. 781, 789 (Fed. Cir. 1983)) (emphasis in original). See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (“The identical invention must be shown in as complete detail as contained in the . . . claims.”). Clearly there are differences between the apparatus described in cited referenced and the methods as currently claimed in independent Claims 1 and 21.

Therefore, Applicants respectfully request that the Examiner withdraw the Section 102 rejections of pending independent Claims 1 and 21 and those claims that depend therefrom.


Pursuant to the above amendments and remarks, reconsideration and allowance of the pending application is believed to be warranted. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issue.

ATTORNEY DOCKET NO. 01107.0019U1
APPLICATION NO. 10/691,968

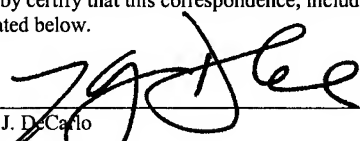
A Request for Extension of Time is submitted herewith. Further a fee in the amount of \$525.00 for a three-month extension of time for a small entity is enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted by EFS-WEB on the date indicated below.	
 Kean J. DeCarlo	<u>11/1/2007</u> Date